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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/511,582

Applicant(s)

BOSMA, EPKE

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 8-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/18/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of group I, claims 1-7, in the reply filed on 5/23/06 is acknowledged. The traversal is on the ground(s) that it is not a serious burden on the Examiner to search all groups even if the groups are independent and distinct. This is not found persuasive because the argument does not pertain to restriction based on a 371 case. In a 371 restriction, the Examiner is required to show lacking of special technical features and not serious burden, which the Examiner has demonstrated such features. In addition, the groups as listed lack special technical features as demonstrated by the prior art listed on the form PTO-1449 and employed by the Examiner below, which is another rule for a 371 restriction. Furthermore, even in a US restriction practice, group I would be classified in class 119, subclass 14.02 and group II would be classified in class 119, subclass 14.08, which demonstrates establishing burden as required by MPEP Section 808.02 as stated below. Therefore, the requirement is still deemed proper and is therefore made FINAL. Claims 8-13 have been withdrawn from further consideration due to non-elected invention.

#### **808.02 [R-3] \*\*> Establishing Burden<**

Where, as disclosed in the application, the several inventions claimed are related, and such related inventions are not patentably distinct as claimed, restriction under 35 U.S.C. 121 is never proper (MPEP § 806.05). If applicant \*\*>voluntarily files claims to such related inventions in different applications<, double patenting may be held. Where the related inventions as claimed are shown to be >independent or< distinct under the criteria of MPEP § 806.05(c) - \*> § 806.06<, the examiner, in order to establish reasons for insisting upon restriction, must >explain why there would be a serious burden on the examiner if restriction is not required. Thus the examiner must< show by appropriate explanation one of the following:

Art Unit: 3643

(A) **Separate classification thereof:** This shows that each **>invention<** has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. Patents need not be cited to show separate classification.

(B) **A separate status in the art when they are classifiable together:** Even though they are classified together, each **>invention<** can be shown to have formed a separate subject for inventive effort when **>the examiner can show<** a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search.

(C) **A different field of search:** Where it is necessary to search for one of the **>inventions** in a manner that is not likely to result in finding art pertinent to the other invention(s) (e.g., searching different classes /subclasses or electronic resources, or employing different search queries<, a different field of search is shown, even though the two are classified together. The indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims. Patents need not be cited to show different fields of search.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-7** are rejected under 35 U.S.C. 103(a) as being unpatentable over Birk (SE 200000179A on form PTO-1449) in view of Mangan (6031367 on form PTO-1449).

For claim 1, Birk discloses a method for separating a first quantity of milk drawn from a milking animal in an automatic milking machine from a second quantity of milk drawn from a milking animal in said milking machine comprising the steps of: milking an animal using said automatic milking machine (page 3, lines 10-25), measuring a first indicator of mastitis (page 4, line 10-11), automatically collecting a small representative amount of said first quantity of milk during said milking (page 4, lines 15-33), analyzing

at least a part of said small representative amount of milk using a cell counter for counting the number of cells in said first quantity of milk (page 4, lines 8-11), operating a valve depending on the counted number of cells so that if the counted number of cells are below a first threshold said first quantity of milk is collected in a first container and if said counted number of cells are equal to or above said first threshold said first quantity of milk are directed to a drain or a second container (page 4, lines 11-14, 26-33, page 5, lines 2-14, 15-25, page 6, lines 5-8), and wherein said analyzing of at least a part of said representative amount of milk, and said operation of said valve, are performed only if said first indicator of mastitis is above a second threshold (page 4, lines 1-6, page 5, lines 15-32, page 6, lines 1-8, lines 11-29). However, Birk is silent about using an on-line cell counter.

Mangan teaches an on-line cell counter for use in a method of milk quality analysis. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the step of using an on-line cell counter as taught by Mangan in the method of Birk in order to get a more accurate analysis of mastitis in the milk.

For claim 2, Birk as modified by Mangan (emphasis on Birk) further discloses wherein the step of operating a valve further comprises the step of collecting said first quantity of milk in a third container if the counted number of cells are above a third threshold but below said first threshold and collect said first quantity of milk in said first container if said counted number of cells are below said third threshold, thereby collecting milk of a first superior quality in said first container, milk of a second quality in

said third container and milk of a third quality is directed to said drain or collected in said second container (page 4, lines 15-22,27-33, page 5, lines 1-13).

For claim 3, Birk as modified by Mangan (emphasis on Birk) further wherein said first indicator of mastitis is one indicator, or a selection of multiple indicators, selected from a group of indicators comprising: the conductivity of said first quantity of milk, the NAgase value of said first quantity of milk, the Urea value of said first quantity of milk, the temperature of said first quantity of milk, the milk flow from said milking animal or the milk quantity from a teat of said milking animal (page 4, lines 8-11).

For claim 4, Birk as modified by Mangan (emphasis on Birk) further discloses wherein said small representative amount of milk is collected from a milk measuring device (page 4, lines 15-33, page 5, lines 15-20).

For claim 5, Birk as modified by Mangan (emphasis on Birk) further discloses wherein said first quantity of milk drawn from one milking animal is collected in an end unit for the duration of performing the somatic cell count (page 4, lines 15-33).


For claim 6, Birk as modified by Mangan (emphasis on Birk) further discloses wherein said first quantity of milk is collected from a first teat of a milking animal and said second quantity of milk is collected from a second teat of said milking animal (page 4, lines 6,17-18).

For claim 7, Birk as modified by Mangan (emphasis on Birk) further wherein said first quantity of milk is collected from a first milking animal and said second quantity of milk is collected from a second milking animal (page 4, lines 17-18).

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Son T. Nguyen  
Primary Examiner  
Art Unit 3643

stn